Supreme Court, U.S.
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No. 95-704

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

AKHTAR HAMID, *et al.*,
Petitioners,
v.
PRICE WATERHOUSE, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF FIRST AMERICAN CORPORATION, *et al.* IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals for the Ninth Circuit properly applied this Court's decisions in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992), and *National Organization for Women, Inc. v. Scheidler*, 114 S. Ct. 798 (1994), in affirming the dismissal of RICO claims based on lack of standing where petitioners' alleged injuries were not proximately caused by the violations claimed.

PARTIES TO THE PROCEEDING

The respondents on this brief are First American Corporation, First American Bankshares, Inc., Jack W. Beddow, Paul G. Adams, III, and A. Vincent Scoffone.

Pursuant to this Court's Rule 29.6, following are the subsidiaries and former parent companies of those respondents that are corporations:

Credit & Commerce Amercian Investment, B.V.
Credit and Commerce American Holdings, N.V.
First American Bank of New York

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STATEMENT

Respondents First American Bankshares, Inc. ("FAB") and its parent, First American Corporation ("FAC") (collectively "First American"), were secretly and illegally acquired by the Bank of Credit and Commerce International and its affiliates (collectively "BCCI") through BCCI's acquisition of control of stock of the parent corporations of First American, Credit and Commerce American Investment, B.V. ("CCAI") and Credit and Commerce American Holdings, N.V. ("CCAH"). Respondents Jack W. Beddow, Paul G. Adams, III, and A. Vincent Scoffone were officers of FAB; Jack W. Beddow and A. Vincent Scoffone also were officers of FAC.

In 1992, BCCI pled guilty to criminal charges arising, *inter alia*, out of its illegal ownership of CCAH. *See* Plea Agreement, *United States v. BCCI Holdings (Luxembourg), S.A.*, Crim. No. 91-0655 (JHG) (D.D.C. Jan. 24, 1992). Pursuant to the Plea Agreement entered into by the United States, the State of New York and BCCI (through its court-appointed Fiduciaries), the United States District Court for the District of Columbia ordered the forfeiture of all of BCCI's assets in the United States, including BCCI's illegally acquired ownership interest in CCAH. The Plea Agreement further provides that a substantial portion of the forfeited assets will be distributed to a Worldwide Victims and Creditors Compensation Fund for the benefit of innocent creditors of BCCI.

In order to effectuate the forfeiture of BCCI's indirect interest in First American, the United States District Court has entered a number of orders resulting in the sale of all of the assets of FAB. On December 21, 1994, the United States District Court ordered the forfeiture of 61.156% of the amount distributable to CCAH shareholders as a consequence of the liquidation of FAB and FAC. Order of Forfeiture, *United States v. BCCI Holdings (Luxembourg), S.A.*, Crim. No. 91-0655 (D.D.C. Dec. 21, 1994). As a result of settlements entered with other shareholders of CCAH, an additional 37.601% of the available funds will be distributed for the benefit of BCCI creditors. Procedural Order, *United States v. BCCI Holdings (Luxembourg), S.A.*, Crim. No. 91-0655 (D.D.C. Dec. 21, 1994) at 15. Thus, more than two-thirds of the amounts distributable as a consequence of the liquidation of First American and its affiliates will be available for the benefit of BCCI creditors.

FAB and FAC have adopted Plans of Dissolution and are in liquidation. However, they have been prevented from making any liquidating distributions, which are a prerequisite to any distributions for the benefit of BCCI creditors, because of the pendency of this action, which

seeks damages in excess of First American's total assets. *Id.* at 10. Consequently, this action has prevented BCCI creditors—who are the very persons petitioners in this matter claim to represent—from obtaining substantial recoveries of the funds lost due to the insolvency of BCCI.

REASONS FOR DENYING THE WRIT

At issue in this case is whether the injuries alleged by petitioners, plaintiffs below, were sufficiently direct to confer standing on these petitioners to maintain a cause of action under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 19 U.S.C. §§ 1961-1968 (1994). In resolving this question, the court below applied the clear and well-established precedents of this Court. As a result, certiorari should be denied.

1. The conclusion reflected in the decision below—that indirect injuries are an inadequate basis for standing to press claims under RICO—is completely consistent with, and in fact faithfully implements, the decisions of this Court, including in particular this Court's decision in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992). *See* Brief in Opposition of Respondents Price Waterhouse, *et al.* at 5-13. The decision below also is wholly consistent with the decisions of the other courts of appeals. *See id.* at 14-15.

2. Likewise, the decision below properly applies this Court's decision in *National Organization for Women, Inc. v. Scheidler*, 114 S. Ct. 798 (1994). Here, the specific facts petitioners included in their Complaint concerning the indirectness of their alleged injuries demonstrated that they were not advancing a claim for which relief could be granted. Although *Scheidler* instructs that "general factual allegations of injury" may be presumed to "embrace those specific facts that are necessary to support the claim," *id.* at 803, where the specific facts pleaded demonstrate that plaintiffs lack standing under RICO, the in-

clusion of general allegations will not permit the claims to proceed. *See* Brief in Opposition of Respondents Price Waterhouse, *et al.* at 15-17.

3. Finally, as set forth in the Brief of the Court Appointed Fiduciaries of BCCI, as Amicus Curiae, In Support of Respondents and In Opposition to Petition for Writ of Certiorari, and as the court below recognized (Pet. App. A20-A21), the present litigation is interfering with the orderly liquidation of First American and, consequently, BCCI, and thus is delaying payments to hundreds of thousands of BCCI creditors worldwide.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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December 1, 1995